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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 10 2020

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

FAREH ZOBERI, an individual; ANDREW
RICAUD, an individual; and JAMES
CAMACHO, an individual, each on their
own behalf, and in their representative
capacity on behalf of all other similarly-
situated Aggrieved Employees,

Plaintiffs,

v.

FITNESS ALLIANCE, LLC, dba EOS
FITNESS, a California limited liability
company; BRUCKMANN, ROSSER,
SHERRILL & CO., LLC, a Delaware limited
liability company; EOS FITNESS OPCO
HOLDINGS, LLC, a Delaware limited
liability company; EOS FITNESS BRAND,
LLC, a Nevada limited liability company;
EOS FITNESS HOLDINGS, LLC, a
Delaware limited liability company; and
BRUCKMANN, ROSSER, SHERRILL &
CO., INC., a Delaware corporation; and
DOES 1 through 25, inclusive,

Defendants.

Case No. CIV DS 2010622

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATION OF LABOR
CODE § 2698 Et Seq. (Private Attorneys
General Act of 2004)**

1 Plaintiffs FAREH ZOBERI, an individual; ANDREW RICAUD, an individual; and
2 JAMES CAMACHO, an individual (“Plaintiffs”), each on their own behalf, and in their
3 representative capacity for all other similarly-situated Aggrieved Employees, hereby bring this
4 First Amended Complaint (“Complaint”) against FITNESS ALLIANCE, LLC, dba EOS
5 FITNESS, a California limited liability company; BRUCKMANN, ROSSER, SHERRILL & CO.,
6 LLC, a Delaware limited liability company; EOS FITNESS OPCO HOLDINGS, LLC, a
7 Delaware limited liability company; EOS FITNESS BRAND, LLC, a Nevada limited liability
8 company; EOS FITNESS HOLDINGS, LLC, a Delaware limited liability company;
9 BRUCKMANN, ROSSER, SHERRILL & CO., INC., a Delaware corporation; and DOES 1
10 through 25, inclusive, (“Defendants”) and state and allege as follows:

11 **INTRODUCTION**

12 1. This action is brought pursuant to Labor Code section 2698 *et seq.* (Private Attorneys
13 General Act of 2004) (the “PAGA”) for Defendants’ violations of Labor Code sections 201, 204,
14 226, 226.7, 510, 512, 1174, and 2802.

15 2. This complaint challenges Defendant’s systemic illegal employment practices resulting in
16 violations of the Labor Code against Plaintiffs and the Aggrieved Employees.

17 3. Plaintiffs are informed and believe and based thereon allege that Defendant and DOES 1
18 through 25, jointly and severally acted intentionally and with deliberate indifference and
19 conscious disregard to Plaintiffs’ rights by failing to lawfully compensate Plaintiffs their full and
20 proper wages in compliance with the California Labor Code and applicable Industrial Wage
21 Orders (“IWC”); failed to provide them with Labor Code and IWC compliant rest and meal break
22 periods; and failed to reimburse them for work-related expenses incurred in the discharge of their
23 duties as further alleged herein.
24

25 **THE PARTIES**

26 4. Plaintiff FAREH ZOBERI is and was, at all times relevant to this Complaint, an adult
27 individual working for Defendants in San Bernardino County and Riverside County, California.

28 5. Plaintiff ANDREW RICAUD is and was at all times relevant to the Complaint, an adult

1 individual working for Defendants in Los Angeles County and Orange County, California.

2 6. Plaintiff JAMES CAMACHO is and was at all times relevant to the Complaint, an adult
3 individual working for Defendants in San Bernardino County, California.

4 7. At all times relevant to this Complaint, Defendant, FITNESS ALLIANCE, LLC dba EOS
5 FITNESS is and was a California limited liability company doing business and employing persons
6 throughout California, where it employed Plaintiff and the Aggrieved Employees.

7 8. At all times relevant to this Complaint, Defendant BRUCKMANN, ROSSER,
8 SHERRILL & CO., LLC is and was a Delaware limited liability company doing business and
9 employing persons throughout California, where it employed Plaintiff and the Aggrieved
10 Employees.

11 9. At all times relevant to this Complaint, Defendant EOS FITNESS OPCO HOLDINGS,
12 LLC, is and was a Delaware limited liability company doing business and employing persons
13 throughout California, where it employed Plaintiff and the Aggrieved Employees.

14 10. At all times relevant to this Complaint, Defendant EOS FITNESS BRAND, LLC, is and
15 was a Nevada limited liability company doing business and employing persons throughout
16 California, where it employed Plaintiff and the Aggrieved Employees.

17 11. At all times relevant to this Complaint, Defendant EOS FITNESS HOLDINGS, LLC is
18 and was a Delaware limited liability company doing business and employing persons throughout
19 California, where it employed Plaintiff and the Aggrieved Employees.

20 12. At all times relevant to this Complaint, Defendant BRUCKMANN, ROSSER,
21 SHERRILL & CO., INC., is and was a Delaware corporation doing business and employing
22 persons throughout California, where it employed Plaintiff and the Aggrieved Employees.

23 13. Defendants operate 30 EOS fitness locations in Arizona, Las Vegas and Southern
24 California.

25 14. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under the
26 fictitious names DOES 1 through 25, inclusive, but pray for leave to amend and serve such
27 fictitiously-named Defendants pursuant to California Code of Civil Procedure section 474 once
28

1 their names and capacities become known.

2 15. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 25, inclusive,
3 are the partners, agents, owners, shareholders, managers, principals or employees of Defendants
4 and/or and were acting on behalf of Defendants.

5 16. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
6 omissions alleged herein was performed by or is attributable to Defendants, each acting as the
7 agent for the other, with legal authority to act on the other's behalf. The acts of any and all
8 Defendants were in accordance with, and represent the policy of, all Defendants.

9 17. At all times herein mentioned, Defendants, and each of them, ratified each and every act
10 or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
11 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
12 causing the damages herein alleged.

13 18. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants is in
14 some manner intentionally, negligently or otherwise responsible for the acts, omissions,
15 occurrences and transactions alleged herein.

16 **JURISDICTION**

17 19. This Court has jurisdiction over the violations of the PAGA and Labor Code sections 201,
18 204, 226, 226.7, 510, 512, 1174, and 2802.

19 20. This Court has jurisdiction over all Defendants, because upon information and belief, each
20 party has sufficient minimum contacts in California or otherwise intentionally avails itself of
21 California law so as to render the exercise of jurisdiction over it by the California courts consistent
22 with traditional notions of fair play and substantial justice.

23 21. Venue is proper in this Court because, upon information and belief, the named Defendants
24 transact business and/or have office in this county and the acts and omissions alleged herein took
25 place in this county.

26 22. The civil penalties sought in this action exceed the minimum jurisdiction limits of this
27 Court and will be established according to proof at trial.
28

1 **ALTER EGO, AGENCY AND JOINT EMPLOYERS**

2 23. Plaintiffs are informed and believe, and based thereon allege, that there exists such a unity
3 of interest and ownership between Defendants that the individuality and separateness of
4 Defendants has never existed or has ceased to exist.

5 24. Plaintiffs are informed and believe, and based thereon allege, that despite the formation
6 of purported corporate existence, Defendants are in reality one and the same including, but not
7 limited to, because:

- 8 a. Defendants are completely dominated and controlled by the same company, which
9 committed the violations of laws as set forth in this complaint, and which has hidden
10 and currently hide behind separate company formations to perpetrate frauds,
11 circumvent statutes, or accomplish some other wrongful or inequitable purpose;
- 12 b. DOES 1–25, inclusive, have acted on behalf of the other Defendants, who violate, or
13 cause to be violated, the provisions regulating minimum wages or hours and days of
14 work in any order of the Industrial Welfare Commission, or violates, or causes to be
15 violated, the California Labor Code;
- 16 c. DOES 1–25, inclusive, are owners, managers, officers, or managing agents of the
17 other Defendants, and the term “managing agent” has the same meaning as in
18 subdivision (b) of Section 3294 of the California Civil Code;
- 19 d. DOES 1–25, inclusive, derive actual and significant monetary benefits by and
20 through the other Defendants, and their unlawful conduct, and by using the other
21 Defendants as the funding source for their own personal expenditures;
- 22 e. Plaintiffs are informed and believe that Defendants, while really one and the same,
23 were segregated to appear as though separate and distinct for purposes of perpetrating
24 a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
25 purpose;
- 26 f. Plaintiffs are informed and believe that Defendants do not comply with all requisite
27 corporate formalities to maintain a legal and separate corporate existence; and
28 g. Plaintiffs are informed and believe, and based thereon allege, that the business affairs

1 of Defendants are and at all times relevant were so mixed and intermingled that the
2 same cannot reasonably be segregated, and the same are in inextricable confusion.
3 Defendants' purported separateness is and at all times relevant was used as a mere
4 shell and conduit for the conduct of certain of Defendants' affairs, and are and were
5 the alter ego of one another. The recognition of the separate existence of Defendants
6 would not promote justice in that it would permit Defendants to insulate themselves
7 from liability to Plaintiff for violations of the Labor Code and other statutory
8 violations. The corporate existence of Defendants should be disregarded in equity
9 and for the ends of justice because such disregard is necessary to avoid fraud and
10 injustice to Plaintiff herein.

11 25. Accordingly, each of Defendants is the alter ego of one another, and the fiction of their
12 separate corporate existence must be disregarded.

13 26. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
14 thereon allege, that Defendants were Plaintiffs' joint employers by virtue of a joint enterprise, and
15 that Plaintiffs were employees of Defendants. Plaintiffs performed services for each and every
16 one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control
17 of Plaintiffs as employees, either directly or indirectly, and the manner in which Defendants'
18 business was and is conducted.

19 **GENERAL ALLEGATIONS**

20 27. Plaintiffs and the Aggrieved Employees currently work or formerly worked for
21 Defendants throughout the State of California during the relevant period. Plaintiffs and the
22 Aggrieved Employees worked at Defendants' "EOS Fitness" gyms.

23 28. Plaintiff ZOBARI was employed by Defendants from approximately July 2, 2019 until
24 approximately November 15, 2019. During his employment, he worked at two of Defendants'
25 locations: 39400 Murrieta Hot Springs Rd. #101, Murrieta, CA 92563 and 9930 Alabama St.,
26 Redlands, CA 92374. As a General Manager in-training and General Manager, ZOBARI's job
27 duties included team building, team development, sales, payroll, community outreach, marketing,
28

1 personal training sales, and daily staff meetings.

2 29. Plaintiff ZOBARI worked Monday through Saturday, 8:00 am to 9:00 pm, and he also
3 worked some Sundays. Despite working 13-hour days, ZOBARI was never paid any overtime
4 compensation for hours worked in excess of eight hours in a workday or forty hours in a
5 workweek, nor was ZOBARI paid overtime compensation for the first eight hours he worked on
6 the seventh day of work in any one workweek. Moreover, ZOBARI was not paid “double-time”
7 compensation when he worked more than twelve hours in a workday or more than eight hours on
8 the seventh day of work in any one workweek.

9 30. Defendants likewise failed to pay overtime compensation to Plaintiffs RICAUD and
10 CAMACHO throughout their employment with Defendants when they worked more than eight
11 hours in a workday or forty hours in a workweek. Defendants also failed to pay Plaintiffs
12 RICAUD and CAMACHO overtime compensation for the first eight hours they worked on the
13 seventh day of work in any one workweek. In addition, Defendants failed to pay Plaintiffs
14 RICAUD and CAMACHO “double-time” compensation when they worked more than twelve
15 hours in a workday or more than eight hours on the seventh day of work in any one workweek.
16

17 31. Plaintiffs allege on information and belief that Defendants likewise failed to pay the
18 Aggrieved Employees overtime compensation when they worked more than eight hours in a
19 workday or forty hours in a workweek. Plaintiffs also allege on information and belief that
20 Defendants likewise failed to pay the Aggrieved Employees overtime compensation for the first
21 eight hours they worked on the seventh day of work in any one workweek. Plaintiffs further
22 allege on information and belief that Defendants failed to pay the Aggrieved Employees “double-
23 time” compensation when they worked more than twelve hours in a workday or more than eight
24 hours on the seventh day of work in any one workweek.

25 32. Defendants required and expected Plaintiffs and the Aggrieved Employees to work
26 virtually non-stop throughout their scheduled shifts.

27 33. Throughout Plaintiff ZOBARI’s employment with Defendants, he was never relieved of
28 all duties nor allowed to take uninterrupted rest breaks of at least 10 minutes after working four

1 hours or a major fraction thereof.

2 34. Defendants likewise failed to relieve Plaintiffs RICAUD and CAMACHO of all duties in
3 order to allow them to take uninterrupted rest breaks of at least 10 minutes after working four
4 hours or a major fraction thereof.

5 35. Plaintiffs allege on information and belief that Defendants likewise failed to relieve the
6 Aggrieved Employees of all duties to allow them to take uninterrupted rest breaks of at least 10
7 minutes after working four hours or a major fraction thereof.

8 36. Throughout Plaintiff ZOBERI's employment with Defendants, he was rarely, if ever,
9 relieved of all duties in order to take timely, uninterrupted meal breaks of at least 30 minutes after
10 working five (5) hours. When Defendants did permit ZOBERI to eat a meal, he was expected to
11 remain accessible at all times to stop their meal breaks to attend to EOS Fitness customers' or
12 other business needs. Such work-related interruptions during meal or rest breaks was routine
13 throughout the entire term of his employment.

14 37. Throughout their employment with Defendants, Plaintiffs RICAUD and CAMACHO
15 likewise were rarely relieved of all duties in order to take uninterrupted meal breaks of at least 30
16 minutes after working five (5) hours. Whenever and at whatever hour of labor they were finally
17 permitted to eat a meals, they were nevertheless expected to remain accessible at all times in order
18 to stop their meal breaks to attend to EOS Fitness customers' other business needs. Such work-
19 related interruptions during meal or rest breaks was routine throughout the entire term of their
20 employment.

21 38. Plaintiffs allege on information and belief that the Aggrieved Employees likewise were
22 rarely relieved of all duties and allowed to take uninterrupted meal breaks of at least 30 minutes
23 after working five (5) hours, and that when Defendants did allow them to take a meal break, they
24 were still expected to remain accessible at all times via cell phone to stop their meal break in order
25 to attend to EOS Fitness customers' or other business needs. Such work-related interruptions
26 during meal or rest breaks was routine throughout the entire term of his employment.

27 39. Throughout Plaintiff ZOBERI's employment with Defendants, he was rarely relieved of
28

1 all duties in order to take a second uninterrupted meal break of at least 30 minutes after working
2 ten (10) hours. Whenever ZOBERI was permitted to eat a meal, he was expected to remain
3 accessible at all times to attend to EOS Fitness customers' or other business needs.

4 40. Throughout their employment, Plaintiffs RICAUD and CAMACHO likewise were rarely
5 relieved of all duties and allowed to take a second uninterrupted meal break of at least 30 minutes
6 after working ten (10) hours. When Defendants did allow them to eat a meal, they were expected
7 to remain accessible at all times to attend to EOS Fitness customers' or other business needs.

8 41. Plaintiffs allege on information and belief that throughout their employment, the
9 Aggrieved Employees likewise were rarely relieved of all duties and allowed to take a second
10 uninterrupted meal break of at least 30 minutes after working ten (10) hours, and that when
11 Defendants did allow them to eat a meal, they were expected to remain accessible at all times to
12 attend to EOS Fitness customers' or other business needs.

13 42. Plaintiffs did not waive their right to meal breaks at any time.

14 43. Plaintiffs allege on information and belief that the Aggrieved Employees likewise never
15 waived their right to meal breaks at any time.

16 44. Employees working at the location where Plaintiff ZOBERI worked were unable to
17 "clock in" and "clock out" for several months, even though Plaintiff ZOBERI repeatedly
18 complained to his area manager that the time clock machine was broken. November 10, 2019,
19 Defendants replaced the broken time clock machine, but the area manager failed to come in and
20 enter the employees' ID numbers so that workers could clock in and out. As a result, Defendants
21 knowingly failed to maintain accurate records of the hours worked by Plaintiff ZOBERI and the
22 other employees working at the same location for several months during 2019.

23 45. Defendants failed to pay Plaintiff ZOBERI all wages he earned. Defendants failed to pay
24 him for the hours he worked from July 2, 2019 through July 7, 2019, and failed to pay him all
25 commissions and incentive payments he earned. Defendants also failed to pay ZOBERI the
26 incentive payment he earned in October of 2019.

27 46. Defendants likewise failed to pay Plaintiffs RICAUD and CAMACHO all wages they
28

1 earned.

2 47. Plaintiffs allege on information and belief that Defendants similarly failed to pay the
3 Aggrieved Employees all wages they earned.

4 48. Defendants required Plaintiffs and the Aggrieved Employees to use their personal cell
5 phones to perform their work related duties. Defendants required Plaintiffs and the Aggrieved
6 Employees to install and use applications (“apps”), such as WhatsApp and Gmail, on their
7 personal cell phones to send and receive work-related communications. Plaintiffs and the
8 Aggrieved Employees used their personal cell phones to perform their work duties both during
9 and outside of their scheduled work shifts. However, Defendants failed to reimburse Plaintiffs
10 and the Aggrieved Employees for those work-related expenses.

11 49. Defendants required Plaintiff ZOBARI to use his personal vehicle to travel for work-
12 related purposes (*e.g.*, to attend meetings, training sessions, community events, fairs, and other
13 marketing events). From approximately July 2, 2019 through July 26, 2019, Defendants required
14 ZOBARI to use his personal vehicle to travel 50 miles (one-way) to Defendant’s Murrieta location.
15 Defendants also required ZOBARI to use his personal vehicle to travel to training sessions in
16 downtown Los Angeles. However, Defendants never reimbursed ZOBARI for the use of his
17 personal vehicle for work-related purposes.

18 50. Defendants also required Plaintiffs RICAUD and CAMACHO to use their personal
19 vehicles for work-related travel. However, Defendants failed to reimburse them for those work-
20 related travel expenses.

21 51. Plaintiffs allege on information and belief that Defendants likewise required the
22 Aggrieved Employees to use their vehicles for work-related travel, but failed to reimburse the
23 Aggrieved Employees for those work-related expenses.

24
25
26 **CAUSE OF ACTION**
27 **VIOLATION OF THE PAGA**
28 **(As to Defendants and Does 1 – 25, inclusive)**

52. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully

1 set forth herein.

2 53. PAGA expressly establishes that any provision of the California Labor Code which
3 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
4 Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or
5 employees for a violation of the California Labor Code, may be recovered through a civil action
6 brought by an aggrieved employee on behalf of himself or herself, and other current or former
7 employees.

8 54. On March 25, 2020, Plaintiff ZOBERI, on behalf of himself and all similarly-situated
9 Aggrieved Employees, submitted a written Notice to the LWDA setting forth the alleged facts
10 and identifying the specific provisions of the Labor Code that he contended were violated by
11 Defendant. A true and correct copy of the March 25, 2020 PAGA Notice is attached hereto as
12 **Exhibit A.** More than 65 days have passed since ZOBERI submitted his PAGA Notice and, to
13 date, he has not received a response from the LWDA indicating its intent to investigate his claims.

14 55. Each of the Plaintiffs were non-exempt employees and are “aggrieved employees” as
15 defined by California Labor Code section 2699(c) in that they are all former employees of
16 Defendants, and one or more of the alleged violations was committed against them.

17 **Unpaid Wages**

18 56. At all relevant times, Labor Code section 200(a) provided: “‘Wages’ includes all amounts
19 for labor performed by employees of every description, whether the amount is fixed or ascertained
20 by the standard of time, task, piece, commission basis, or other method of calculation.”

21 57. At all relevant times, Labor Code section 204 provided in relevant part: “All wages, other
22 than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
23 employment are due and payable twice during each calendar month, on days designated in
24 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
25 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
26 during which the labor was performed, and labor performed between the 16th and the last day,
27 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
28

1 month.”

2 58. As alleged above, Defendants failed to pay Plaintiff ZOBERI all wages he earned.
3 Defendants failed to pay him for his hours worked from July 2 through July 7, 2019, and failed
4 to pay him all commissions and incentive payments he earned. Defendants failed to pay ZOBERI
5 the incentive payment he earned in October 2019.

6 59. Defendants likewise failed to pay Plaintiffs RICAUD and CAMACHO all wages they
7 earned.

8 60. Plaintiffs allege on information and belief that Defendants likewise failed to pay the
9 Aggrieved Employees all wages they earned.

10 61. At all relevant times, Labor Code section 218.5 provided in relevant part: “(a) In any
11 action brought for the nonpayment of wages . . . the court shall award reasonable attorney’s fees
12 and costs to the prevailing party if any party to the action requests attorney’s fees and costs upon
13 the initiation of the action.”

14 62. Plaintiffs request attorney’s fees and costs pursuant to Labor Code section 218.5.

15
16 **Unpaid Overtime Compensation**

17 63. At all relevant times, Labor Code section 510 provided in relevant part: “Any work in
18 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
19 and the first eight hours worked on the seventh day of work in any one workweek shall be
20 compensated at the rate of no less than one and one-half times the regular rate of pay for an
21 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
22 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
23 on any seventh day of a workweek shall be compensated at the rate of no less than twice the
24 regular rate of pay of an employee.”

25 64. As alleged above, throughout their employment with Defendants, Plaintiffs worked more
26 than eight hours in one workday and/or more than 40 hours in one workweek, but Defendants
27 failed to pay them overtime compensation for those overtime hours worked. As further alleged
28 above, Defendants failed to pay overtime compensation to the Plaintiffs for the first eight hours

1 worked on the seventh day of work in any one workweek.

2 65. Plaintiffs allege on information and belief that Defendants likewise failed to pay the
3 Aggrieved Employees overtime compensation when they worked more than eight hours in one
4 workday and/or more than 40 hours in one workweek, and failed to pay overtime compensation
5 to the Aggrieved Employees for the first eight hours worked on the seventh day of work in any
6 one workweek.

7 66. As alleged above, Defendants failed to pay Plaintiffs “double-time” compensation when
8 they worked more than 12 hours in one workday, and when they worked more than eight hours
9 on the seventh day of work in one workweek.

10 67. Plaintiffs allege on information and belief that Defendants likewise failed to pay the
11 Aggrieved Employees “double-time” compensation when they worked more than 12 hours in one
12 workday, and when they worked more than eight hours on the seventh day of work in one
13 workweek.

14 68. Defendants knew or should have known that Plaintiffs and the Aggrieved Employees
15 worked overtime and “double-time” hours.

16 69. At all relevant times, Labor Code section 1194(a) provided in relevant part: “any
17 employee receiving less than . . . the legal overtime compensation applicable to the employee is
18 entitled to recover in a civil action the unpaid balance of the full amount of this . . . overtime
19 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

20
21 **Failure to Maintain Accurate Payroll Records**

22 70. At all relevant times, Labor Code section 1174(d) required employers to maintain payroll
23 records showing, among other things, the hours worked daily by employees.

24 71. As alleged above, employees working at the location where Plaintiff ZOBERI worked
25 were unable to “clock in” and “clock out” for several months until approximately November 10,
26 2019, when Defendants replaced the broken time clock machine. As a result, Defendants failed
27 to maintain accurate records of the hours worked by Plaintiff ZOBERI and the other employees
28 working at the same location for several months before November 10, 2019, in violation of Labor

1 Code section 1174(d).

2 **Failure to Provide Accurate Itemized Wage Statements**

3 72. At all relevant times, Labor Code section 226(a) required employers to provide an accurate
4 itemized statement to each employee at the time of each payment of wages showing, among other
5 things, the total hours worked by the employee and the gross wages earned.

6 73. As a result of Defendants' failure to pay all wages, failure to pay overtime compensation,
7 and failure to maintain accurate payroll records, Defendants likewise failed to provide accurate
8 itemized wage statements to Plaintiffs and the Aggrieved Employees, in violation of Labor Code
9 section 226(a).

10 **Failure to Timely Pay Final Wages**

11 74. At all relevant times, Labor Code section 201(a) provided in relevant part: "If an employer
12 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately."

14 75. As a result of Defendants' failure to pay wages and failure to pay overtime compensation,
15 as alleged above, Defendants likewise failed to timely pay all final wages to Plaintiffs and the
16 Aggrieved Employees, in violation of Labor Code section 201.

17 76. At all relevant times, Labor Code section 203(a) provided in relevant part: "If an employer
18 willfully fails to pay, without abatement or reduction, in accordance with Sections 201 . . . any
19 wages of an employee who is discharged . . . the wages of the employee shall continue as a penalty
20 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
21 the wages shall not continue for more than 30 days."

22 77. As a result of Defendants' violation of Labor Code section 201, Plaintiffs and the
23 Aggrieved Employees are entitled to the "waiting time" penalties described in Labor Code section
24 203.

25 **Meal & Rest Break Violations**

26 78. At all relevant times, Labor Code section 512(a) provided in relevant part: "An employer
27 shall not employ an employee for a work period of more than five hours per day without providing
28

1 the employee with a meal period of not less than 30 minutes An employer shall not employ
2 an employee for a work period of more than 10 hours per day without providing the employee
3 with a second meal period of not less than 30 minutes”

4 79. At all relevant times, the California Industrial Welfare Commission’s Order No. 2-2001,
5 which applies to Defendants’ industry, provided in relevant part: “Every employer shall authorize
6 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
7 of each work period. The authorized rest period time shall be based on the total hours worked
8 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

9 80. Defendants required and expected Plaintiffs and the Aggrieved Employees to work
10 virtually non-stop through their shifts.

11 81. Throughout Plaintiff ZOBARI’s employment with Defendants, he was never relieved of
12 all duties and allowed to take uninterrupted rest breaks of at least 10 minutes after working four
13 hours or a major fraction thereof.

14 82. Defendants likewise failed to relieve Plaintiffs RICAUD and CAMACHO of all duties
15 and allow them to take uninterrupted rest breaks of at least 10 minutes after working four hours
16 or a major fraction thereof.

17 83. Plaintiffs allege on information and belief that Defendants likewise failed to relieve the
18 Aggrieved Employees of all duties and allow them to take uninterrupted rest breaks of at least 10
19 minutes after working four hours or a major fraction thereof.

20 84. Throughout Plaintiff ZOBARI’s employment with Defendants, he was rarely relieved of
21 all duties and allowed to take uninterrupted meal breaks of at least 30 minutes after working five
22 (5) hours. When Defendants did allow ZOBARI to eat a meal, he was expected to remain
23 accessible via cell phone to attend to customers or other business needs.

24 85. Throughout their employment with Defendants, Plaintiffs RICAUD and CAMACHO
25 likewise were rarely relieved of all duties and allowed to take uninterrupted meal breaks of at
26 least 30 minutes after working five (5) hours. When Defendants did allow them to eat a meal,
27 they were expected to remain accessible via cell phone to attend to customers or other business
28

1 needs.

2 86. Plaintiffs allege on information and belief that the Aggrieved Employees likewise were
3 rarely relieved of all duties and allowed to take uninterrupted meal breaks of at least 30 minutes
4 after working five (5) hours, and that when Defendants did allow them to eat a meal, the
5 Aggrieved Employees were expected to remain accessible via cell phone to attend to customers
6 or other business needs.

7 87. Throughout Plaintiff ZOBERI's employment with Defendants, he was rarely relieved of
8 all duties and allowed to take a second uninterrupted meal break of at least 30 minutes after
9 working ten (10) hours. When Defendants did allow ZOBERI to eat a meal, he was expected to
10 remain accessible via cell phone to attend to customers or other business needs.

11 88. Throughout their employment, Plaintiffs RICAUD and CAMACHO likewise were rarely
12 relieved of all duties and allowed to take a second uninterrupted meal break of at least 30 minutes
13 after working ten (10) hours. When Defendants did allow them to eat a meal, they were expected
14 to remain accessible via cell phone to attend to customers or other business needs.

15 89. Plaintiffs allege on information and belief that throughout their employment, the
16 Aggrieved Employees likewise were rarely relieved of all duties and allowed to take a second
17 uninterrupted meal break of at least 30 minutes after working ten (10) hours, and that when
18 Defendants did allow them to eat a meal, they were expected to remain accessible via cell phone
19 to attend to customers or other business needs.

20 90. Plaintiffs did not waive their right to meal breaks at any time.

21 91. Plaintiffs allege on information and belief that the Aggrieved Employees likewise never
22 waived their right to meal breaks at any time.

23 92. At all relevant times, Labor Code section 226.7(b) provided in relevant part: "An
24 employer shall not require an employee to work during a meal or rest or recovery period mandated
25 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial
26 Welfare Commission"

27 93. At all relevant times, Labor Code section 226.7(c) provided in relevant part: "If an
28

1 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
2 law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
3 of the Industrial Welfare Commission . . . the employer shall pay the employee one additional
4 hour of pay at the employee's regular rate of compensation for each workday that the meal or rest
5 or recovery period is not provided.

6 94. Despite Defendants' failure to provide meal and rest breaks to Plaintiffs, Defendants never
7 paid Plaintiffs "premium" pay for unprovided meal breaks and rest breaks, in violation of Labor
8 Code section 226.7.

9 95. Plaintiffs allege on information and belief that despite Defendants' failure to provide meal
10 and rest breaks to the Aggrieved Employees, Defendants never paid the Aggrieved Employees
11 "premium" pay for unprovided meal breaks and rest breaks, in violation of Labor Code section
12 226.7.

13 **Failure to Reimburse for Work-Related Expenses**

14 96. At all relevant times, Labor Code section 2802 provided that an employer shall indemnify
15 his or her employees for all necessary expenditures or losses incurred by the employee in direct
16 consequence of the discharge of his or her duties.

17 97. As alleged above, Defendants required Plaintiffs and the Aggrieved Employees to use
18 their personal cell phones to perform their work duties. Defendants required Plaintiffs and the
19 Aggrieved Employees to install and use applications ("apps"), such as WhatsApp and Gmail, on
20 their personal cell phones to send and receive work-related communications. Plaintiffs and the
21 Aggrieved Employees used their personal cell phones to perform their work duties both during
22 and outside of their scheduled work shifts. However, Defendants failed to reimburse Plaintiffs
23 and the Aggrieved Employees for those work-related expenses.

24 98. Defendants required Plaintiff ZOBERI to use his personal vehicle to travel for work-
25 related purposes (*e.g.*, to attend meetings, training sessions, community events, fairs, and other
26 marketing events). From approximately July 2 through July 26, 2019, Defendants required
27 ZOBERI to use his personal vehicle to travel 50 miles (one-way) to Defendant's Murrieta location.
28

1 Defendants also required ZOBARI to use his personal vehicle to travel to training sessions in
2 downtown Los Angeles. However, Defendants never reimbursed ZOBARI for the use of his
3 personal vehicle for work-related purposes.

4 99. Defendants likewise required Plaintiffs RICAUD and CAMACHO to use their personal
5 vehicles for work-related travel. However, Defendants failed to reimburse them for those work-
6 related expenses.

7 100. Plaintiffs allege on information and belief that Defendants likewise required the
8 Aggrieved Employees to use their vehicles for work-related travel, but failed to reimburse the
9 Aggrieved Employees for those work-related expenses.

10 101. As a result of Defendant's violation of Labor Code section 2802, Plaintiffs and the
11 Aggrieved Employees seek reimbursement for all business-related expenses they have incurred
12 working for Defendant in an amount that exceeds the jurisdictional minimum of this Court to be
13 ascertained at trial, with interest thereon.

14 **Damages**

15 102. Plaintiffs request and are entitled to recover from Defendants unpaid wages,
16 unpaid overtime compensation, "waiting time" penalties, meal and rest period "premium" pay,
17 civil penalties, interest, attorneys' fees and costs, as well as all statutory penalties against
18 Defendants, and each of them, including but not limited to:

19 103. All unpaid wages pursuant to Labor Code section 204 in an amount determined
20 according to proof;

21 104. All unpaid overtime compensation pursuant to Labor Code section 510 in an
22 amount determined according to proof;

23 105. All unreimbursed work-related expenses pursuant to Labor Code section 2802 in an
24 amount determined according to proof;

25 106. All "waiting time" penalties pursuant to Labor Code section 203 in an amount
26 determined according to proof;

27 107. All meal and rest period "premium" pay pursuant to Labor Code section 226.7 in an
28

1 amount determined according to proof;

2 108. Civil Penalties under California Labor Code section 2699 in the amount of a hundred
3 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

5 109. Any and all additional penalties and sums as provided by the Labor Code and/or other
6 statutes; and

7 110. Attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, 2699.3, 2802,
8 and any other applicable statute.

9 111. Interest on all unpaid wages pursuant to Labor Code section 218.6;

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs and the Aggrieved Employees pray for judgment on the Cause
12 of Action as follows:

- 13 1. All unpaid wages pursuant to Labor Code section 204 in an amount determined according
14 to proof;
- 15 2. All unpaid overtime compensation pursuant to Labor Code section 510 in an amount
16 determined according to proof;
- 17 3. All unreimbursed work-related expenses pursuant to Labor Code section 2802 in an
18 amount determined according to proof;
- 19 4. All "waiting time" penalties pursuant to Labor Code section 203 in an amount determined
20 according to proof;
- 21 5. All meal and rest period "premium" pay pursuant to Labor Code section 226.7 in an
22 amount determined according to proof;
- 23 6. Civil Penalties under California Labor Code section 2699 in the amount of a hundred
24 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
25 two hundred dollars (\$200) for each aggrieved employee per pay period for each
26 subsequent violation;
- 27 7. Any and all additional penalties and sums as provided by the Labor Code and/or other
28 statutes;

- 1 8. Attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, 2699.3, 2802, and
2 any other applicable statute;
3 9. Interest on all unpaid wages pursuant to Labor Code section 218.6;
4 10. For injunctive relief; and
5 11. For such other and further relief the court may deem just and proper.
6

7 DATED: August 19, 2020

WHITEHEAD EMPLOYMENT LAW

8
9 By: 

JACOB N. WHITEHEAD, ESQ.

Attorney for Plaintiffs and the Aggrieved Employees
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EXHIBIT A



March 25, 2020

Via Online Filing and Mail

California Labor & Workforce
Development Agency
455 Golden Gate Ave., 9th Floor
San Francisco, CA 94102

Via Certified Mail

Bruckmann, Rosser, Sherrill & Co., LLC
126 East 56th Street, 29th Floor
New York, NY 10022

Via Certified Mail

Corporation Service Company, Registered Agent,
Bruckmann, Rosser, Sherrill & Co., LLC
251 Little Falls Drive
Wilmington, DE 19808

Via Certified Mail

CT Corporation, Registered Agent for
Fitness Alliance, LLC
818 West 7th Street, Suite 930
Los Angeles, CA 90017

Via Certified Mail

Corporation Trust Center, Registered Agent
EOS Fitness Opco Holdings LLC
1209 Orange Street
Wilmington, DE 19801

Via Certified Mail

CT Corporation System, Registered Agent for
EOS Fitness Brand, LLC
701 S Carson St Ste 200,
Carson City, Nv, 89701

Via Certified Mail

EOS Fitness OPCO Holdings LLC
126 East 56th Street 29th Floor,
New York, NY 10022

Via Certified Mail

Corporation Service Company, Registered Agent,
Bruckmann, Rosser, Sherrill & Co., Inc.
251 Little Falls Drive
Wilmington, DE 19808

Via Certified Mail

Thomas J. Baldwin, Managing Partner
Bruckmann, Rosser, Sherrill & Co., Inc.
126 East 56th Street, 29th Floor
New York, NY 10022

Via Certified Mail

Rich Drengberg, CEO
Fitness Alliance, LLC
1 E. Washington St., Suite 500
Phoenix, AZ 85004

Via Certified Mail

Corporation Trust Company, Registered Agent
EOS Fitness Brand, LLC
701 S. Carson Street, Ste 200
Carson City, NV 89701

Via Certified Mail

Bruckmann, Rosser, Sherrill & Co 111, LP
Manger,
EOS Fitness Brand, LLC
126 E. 56th Street, 29th Floor
New York, NY 10022

Via Certified Mail

EoS Fitness
39400 Murrieta Hot Springs Rd #101
Murrieta, CA 92563

Via Certified Mail

EoS Fitness
9930 Alabama St.
Redlands, CA 92374

RE: PAGA Notice Pursuant to *California Labor Code* § 2699

Dear Sir(s) and/or Madam:

Please be advised that representative, **Fareh Zoberi (“Plaintiff”)** has retained Whitehead Employment Law to represent him and other current or former employees (the “Aggrieved Employees”) of Fitness Alliance, LLC; a California limited liability company; EOS Fitness Brand, LLC, a Nevada limited liability company; Bruckmann, Rosser, Sherrill & Co., Inc., a Delaware corporation; Bruckmann, Rosser, Sherrill & Co, LLC, a Delaware limited liability company; EOS Fitness OPCO Holdings, LLC, a Delaware limited liability company, (collectively “Defendants” or “EOS”) regarding certain wage and hour claims of violations under the California Labor Code. Upon information and belief, Plaintiff alleges that the Defendants are part of an interrelated network of entities engaged in the business of management of franchised health and fitness clubs, and which collectively set, maintain, and control the material operational policies and practices of EOS Fitness Club locations throughout the continental United States, including the State of California.

As detailed below, Plaintiff Zoberi alleges that Defendants violated numerous provisions of California Labor Codes and provisions of the Industrial Wage Commission (“IWC”), thus entitling Plaintiff and similarly situated Aggrieved Employees to penalties under the Private Attorney Generals Act of 2004 (the “PAGA”) and Cal. Lab. Code §2699.3. This notice also formally serves to inform Defendants of Plaintiff’s intent to file a class action complaint, and failing notification from the LWDA of an intent to investigate the claims herein allege, will at the expiration of the applicable statutory waiting period file a class action complaint against Defendants to bring a cause of action for violations of the PAGA for failure to pay all wages due, (Lab. Cod. Section 204); failure to provide rest periods and failure to provide lunch breaks (Lab. Cod. Section 226.7, 512, and IWC No. 2), failure to maintain accurate records of hours worked (Labor Code 1174), failing to reimburse expenses incurred in discharge of work related duties, (Labor Code 2802), failure to pay overtime wages, (Lab. Cod. Section 510); failure to provide accurate wage statements (Lab. Cod. Section 226) and failure to pay all wages due upon termination (Lab. Cod. Section 201).

Plaintiff Zoberi is informed and believes that said violations are ongoing, systematic and uniform. If Defendants fail to cure these alleged violations, as stated above, Plaintiff will amend the civil complaint and bring an action against Defendants under the PAGA to recover wages and penalties as provided by California law.¹

¹ Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815,

Factual Summary:

The Plaintiff, Fareh Zoberi, was an employee of EOS from approximately July 2, 2019 until approximately November 15, 2019. During his employment, Mr. Zoberi worked at two EOS Fitness Club locations : 39400 Murrieta Hot Springs Rd #101 Murrieta, CA 92563 and 9930 Alabama St. Redlands, CA 92374. As a general manager in-training Mr. Zoberi's job duties included team building, team development, sales, payroll, community outreach, marketing, personal training sales, and daily staff meetings.

Mr. Zoberi's (and other Aggrieved Employees') working hours were Monday through Saturday 8am to 9pm, which included routine overtime hours. Mr. Zoberi and the Aggrieved Employees worked 13 hour days and never received any overtime compensation for hours worked in excess of eight hours in a day or greater than 40 hours in a workweek. In addition, Plaintiff and the Aggrieved employees were required to work on Sundays.

Moreover, Plaintiff and Aggrieved Employees were very rarely provided with their lawfully entitled rest breaks after laboring more than four hours or a major fraction thereof, nor were they provided with duty-free meal break periods of at least 30 minutes in duration after working more than six hours. Fundamentally Defendant expected and required Plaintiff and the Aggrieved employees to work nonstop throughout their shifts. Even when purportedly permitted a lunch break, the Plaintiff and Aggrieved Employees were expected to be accessible via cell phone at all times and available to attend to customers. At no time did Plaintiff or the Aggrieved Employees agree to waive their lawfully entitled meal breaks.

At the location where Plaintiff was employed, employees did not clock in/out while working at EOS due a broken time clock machine. Although Plaintiff Zoberi had advised management about the malfunctioning time clock machine on multiple occasions, the machine was never replaced by Defendants until November 10, 2019. Thus, the actual hours that Plaintiff and the Aggrieved Employees worked, were never accurately tracked or recorded.

The Plaintiff and Aggrieved Employees were not paid timely. Plaintiff Zoberi and similarly situated Aggrieved Employees were not paid all wages when and as due. Plaintiff Zoberi worked from July 2 - July 7, 2019 but was never paid for his labor for those five days. EOS also failed to pay earned monthly bonuses timely, and frequently failed to pay Plaintiff and the Aggrieved Employees their earned bonuses (which were based on achievement of targeted sales goals) at all. In October of 2019 the bonuses for the general manager and assistant general manager were not paid, even though EOS' Regional VP Maggie Stevens was notified of the oversight.

While employed at EOS, of necessity, the Plaintiff and Aggrieved Employees utilized their personal cell phones for work-related purposes but received no reimbursement from the Defendants. The Plaintiff and Aggrieved Employees utilized cell phones but during working shifts and after work on their own time, responding to work related phone calls from managers, colleagues and customers. The Plaintiff and Aggrieved Employees also were required to utilize their personal cell phones to install WhatsApp, and to utilize Gmail accounts, to answer and respond to text messages and all work-related

communications. Use of their personal cell phones was essential for the Plaintiff and Aggrieved Employees in order to execute their job duties.

In addition, while working at EOS, the Plaintiff and Aggrieved Employees were required to travel by car for work-related purposes, (e.g. for meetings, mandatory training, meetings with business owners, local community events, fairs and other marketing events) and were not reimbursed for their travel related expenses by EOS. For example, Plaintiff Zoberi traveled 1.5 hours / over 50 miles one way to the Murrieta EOS location from July 2- July 26, 2019 and attended mandatory training in downtown Los Angeles, some 30 miles from his assigned EOS location.

Failure To Maintain Accurate Records of Hours Worked (Labor Code 1174)

Under Labor code 1174(d) “Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

As indicated above, EOS did not keep accurate records of hours worked. From July until November of 2019, the time clock machine was broken. In fact, the employees were not able to clock in/out until November 10, 2019 when the machine was finally replaced. For five months, Defendant provided no mechanism for Plaintiff and the Aggrieved Employees at the Murrieta, CA location to record their time. Defendants have violated Labor Code 1174(d) by failing to maintain records of the hours worked by Plaintiff and the Aggrieved Employees.

Failing To Reimburse (Labor Code 2802)

Under Labor Code Section 2802, “(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

As indicated above, the Plaintiff and Aggrieved employees utilized their personal cell phones/data/service/text and personal vehicles in the course of work-related duties with no reimbursement from EOS. The Plaintiff and Aggrieved employees did not waive their rights to such reimbursement.

Defendant clearly violated Labor Code 2802 (a) and the Plaintiff and the Aggrieved Employees seek all reasonable costs, including, but not limited to, attorney’s fees, and penalties under the Labor Code.

The Defendants have failed to reimburse the Plaintiff and the Aggrieved Employees for their expenses. As a consequence, the Plaintiff and the Aggrieved Employees are entitled to recover their expenses plus attorneys’ fees, interest, expenses and costs of suit.

Rest/Meal Break Violations (Labor Codes 226.7, 512, Cal. Civ. Proc. Code § 1021, And Industrial Welfare Commission Wage Orders)

Under Labor Code 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Under Labor Code 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee...” (emphasis added)

Per the IWC Wage Orders “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. “ (State of California Department of Industrial Relations Website)

As indicated above the Plaintiff and Aggrieved employees were rarely, if ever able to take their rest breaks and were unable to take compliant, duty free meal breaks. The policies and demands in the workplace required Plaintiff and the Aggrieved Employees to work non-stop throughout their scheduled shifts. This is a clear violation of Labor Code 512 (a) and the IWC Wage Orders, both mandating that California employees be permitted rest and meal break periods.

As a result, Plaintiff and the Aggrieved Employees are owed premium pay penalties for all missed rest/meal breaks which they were not paid in violation of Labor Code §226.7 and 512, and IWC No. 2-2001 Sections 11 and 12, as well as waiting time penalties under Labor Code Section 203.

Failure to Pay Wage Due Upon Termination or Discharge

As a further and direct consequence of Defendants’ failure to pay the aforementioned wages, all Aggrieved Employees who separated from their employment with Defendants prior to today, were not and have not been properly paid all wages due upon discharge or separation of employment pursuant to Labor Code Section 201a which provides, “*If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish, or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor.*”

Therefore, Plaintiff Zoberi and all similarly-situated Aggrieved Employees who have been terminated before the date of this letter, are due their unpaid wages, including unpaid bonuses, unpaid overtime, as well as all applicable penalties, interest, and attorneys' fees.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations Labor Codes §§ 510, 1194, 226.7, 512, 2802, 1174, 98.6, 201, Industrial Welfare Commission Wage Orders, Cal. Civ. Proc. Code § 1021, and any and all penalties, interest, and attorneys' fees provided for under Labor Code 2699 and other sections of the Labor Code.

To date, the Defendants have failed to pay the Plaintiff and Aggrieved Employees all of their wages, including overtime pay, premium pay penalties, waiting time penalties, and accrued interest thereon, as well as reimbursements for expenses they incurred in the discharge of their work related duties plus the applicable Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Defendants have violated several provisions of California's Labor Code. Plaintiff requests the LWDA to investigate the above allegations and provide notice of the allegations under PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that she may amend his lawsuit to include the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/dlp